

1. Definitions:

In this Agreement:

- a) "Agreement" means the terms and conditions contained herein.
- b) "Buyer" means Marine Atlantic Inc.
- c) "Claim" means any claim, suit or action by any Person.
- d) "Copyrights" means copyrights in all artwork, copy, labels and packaging for the Deliverables.
- e) "Deliverables" means the products described in Marine Atlantic's Purchase Order.
- f) "Facility" means the facilities/vessels located in North Sydney, Nova Scotia, or as may be changed by the Buyer from time to time.
- g) "Government Authority" means any governmental authority or court, tribunal, agency, department, regulatory agency, commission, arbitrator, board, bureau, or instrumentality in Canada or any other country or territory, or domestic or foreign state, prefecture, province, commonwealth, city, county, municipality, territory, protectorate or possession.
- h) "Indemnified Party" means all Persons, including any third parties, which the Indemnifying Party agrees to indemnify under this Agreement.
- i) "Indemnifying Party" means the Party assuming indemnification obligations under this Agreement.
- j) "Laws" means all laws, statutes, by-laws, ordinances, codes, standards, regulations and other pronouncements having the effect of law of any Government Authority.
- k) "Losses" means any damages awarded and fines assessed in any Claim by a court of competent jurisdiction or pursuant to an arbitration proceeding, any amounts due under Claim settlement, and any other costs, losses, damages, expenses, charges, fines, penalties and/or injuries of every kind and character (including without limiting the generality of the foregoing, legal and other professional fees).
- l) "Marks" means the names, trademarks, service marks, logos, trade dress and related designs or trade names of the Deliverables.
- m) "Materials" means all raw materials, components, and other items necessary for the manufacture of Deliverables.
- n) "Parties" means each of the Buyer and the Seller, and "Party" means either one of them.
- o) "Person" includes an individual, firm, corporation, partnership, joint venture and every other legal or business entity whatsoever.
- p) "Proposal" means the proposal of the Seller issued in response to the RFP, or RFQ, as applicable.
- q) "Purchase Order" means a binding commitment in writing to purchase the Deliverables.
- r) "RFP" means the request for proposals for the Deliverables issued by the Buyer, as applicable.
- s) "RFQ" means the request for proposals for the Deliverables issued by the Buyer, as applicable.
- t) "Seller" means the Party named on the Buyer's Purchase Order who is selling the Deliverables.

2. Deliverables (scope): The Deliverables are the products and goods which are the subject of the Buyer's RFP, RFQ, or Purchase Order, as the case may be, and the Seller's Proposal as agreed and accepted by the Buyer.

3. Purchase Orders: Each Purchase Order will specify, i) the quantity of Deliverables ordered, ii) the required delivery date, and iii) the shipping address and routing instructions. The delivery must be within 48 hours of the Purchase Order being placed, unless otherwise agreed in writing between the parties.

4. Material in Excess: Goods delivered in excess of amount called for in a Purchase Order may be refused by the Buyer and returned at the Seller's expense.

5. Tagging Instructions: When applicable, the Seller shall clearly show the Buyer's stock numbers on shipping/packing slips and invoices for each line item on the Purchase Order.

6. Change of Part Number: Should any change in the manufacturer's part number occur the old part number as well as new part number, along with the Buyer's item code, should appear on the Seller's packing slip. If shipping items other than those specified on the Purchase Order (substitution), or exceeding the quantity on the Purchase Order, the Seller is to notify the Buyer in writing prior to shipment of the material.

7. Specifications: If the Purchase Order refers to plans or specifications, these shall be deemed to be incorporated in and be a part of this Agreement, and any plans, blueprints, patterns, etc., furnished by the Buyer to the Seller shall

not be published or disclosed by the Seller to any other person or corporation, and shall be returned to the Buyer upon completion of the Purchase Order.

8. Standards: The Deliverables shall comply with and meet all Laws and standards applicable to the Deliverables. The Buyer reserves the right to refuse acceptance of: a) Any or all electrical equipment or component part which has not been approved by the Canadian Standards Association (CSA), or ULC; and b) Any or all equipment or component part that does not meet Classification Society, Transport Canada, or other applicable Government Authority.

The Seller is to supply applicable certificates to accompany any material for which such certificates are required to confirm acceptability or to meet conditions imposed by a Classification Society, Transport Canada, or other Government Authority. Delivery of steel (shapes, plate, and etcetera) shall be accompanied by mill certificates acceptable to satisfy Canadian Welding Bureau requirements.

9. Packing List: Packing Lists, preferably in duplicate, must accompany each shipment. The Buyer's Purchase Order number must appear on all packing lists.

10. WHMIS (Workplace Hazardous Materials Identification System): For those products requiring Material Safety Data Sheets (MSDS), please forward current data sheets directly to: Safety Department, Marine Atlantic Inc. 65 Memorial Drive, North Sydney, NS B2A 3V2 Canada

Include one copy of the Material Safety Data Sheet(s) with each shipment. Also in keeping with the Buyer's safety requirements, any bulk product shipped via barrels, 20/25 litre pails, etc., will be refused unless suitably identified as required by WHMIS. The Seller is also required to ensure that a full list of the MSD Sheets for all products supplied to the Buyer is filed with the Canadian Centre for Occupational Health and Safety (CCOHS) for inclusion on its cd-rom MSDS data base.

CCOHS 250 Main Street East Hamilton, ON L8N 1H6 Canada
Phone: 905-572-2981 Fax: 905-572-2206

11. Ownership, Title and Risk of Loss: Ownership of, title to, and risk of loss for the Deliverables passes to the Buyer upon the Buyer's acceptance of the Deliverables. When the Deliverables have passed all performance testing and inspections are complete in accordance with the Purchase Order and this Agreement, and have been delivered to the Buyer, the Buyer will accept the Deliverables. On acceptance by the Buyer, the warranty period will commence. Acceptance shall not release the Seller from its legal obligations and liabilities. Should the Deliverables not be in accordance with the Purchase Order and this Agreement, the Seller will, at the Buyer's option, repair or replace such defective goods at its own cost and expense.

12. Fees: Except as expressly agreed between the Buyer and Seller as confirmed in the Purchase Order, there are no additional fees, charges or expenses incurred. Prices are firm through delivery for the Deliverables specified or for the term of the Agreement, whichever is greater. The Buyer agrees to pay the Seller the fixed price of the Deliverables as agreed in writing between the Parties (the "Fees"). Unless otherwise expressly stated, and confirmed in the Purchase Order, the Fees shall include all taxes, duties, tariffs and charges of any kind which either Party is required to pay with respect to the manufacture, delivery and import (if applicable) of the Deliverables. Fees are in Canadian dollars. The Buyer is obligated pursuant to the *Income Tax Act* (Canada) to withhold for Canadian tax purposes a percentage of the price to be paid to non-residents of Canada unless a valid exemption order is obtained.

13. Invoices: The Buyer agrees to pay to the Seller all Fees owed under this Agreement within forty-five (45) days after the date of delivery and receipt of a complete invoice. A complete invoice is one that contains the invoice number, invoice date, description of the transaction, total invoice amount with miscellaneous charges listed separately and payment terms consistent with and not additional to any provisions under this Agreement.

14. Representations and Warranties:

a) **Mutual Warranties:** Each Party represents, warrants and covenants to the other that: i) **General:** It: (a) is a company duly organized and validly existing and in good standing under the laws of its jurisdiction of incorporation; (b) is qualified or licensed to do business and in good standing in every jurisdiction where qualification or licensing is required; (c) has the corporate power and authority to negotiate, be bound by, execute any other documents, deliver and perform its obligations under this Agreement; and (d) this Agreement has been duly delivered, and constitutes a legally valid and binding obligation enforceable against it in accordance with its terms; and ii) **Law Compliance:** It and the business it conducts is in compliance with all applicable Laws.

b) **Warranties by the Seller:** The Seller represents, warrants and covenants to the Buyer for that: i) **Compliance:** All Deliverables have been manufactured, sold and delivered in strict compliance with all applicable Laws, and are free from all defects in manufacture, design, materials, performance and workmanship; ii) **Warranty Length:** For a period of one (1) year after acceptance pursuant to section 11, the Deliverables conform to the requirements of this Agreement, are free from any defect in manufacture, design, material, performance and workmanship, and are free of all liens, security interests, claims and encumbrances of any kind.

Pursuant to the warranty obligations set forth above, the Seller will, at the Seller's expense, either repair, or at the Buyer's option, replace any part of the Deliverables. The warranty period shall be extended by the time during which the Deliverables are out of service by reason of a defect the Seller is required to repair or replace. All expenses associated with such repair or replacement

including any freight, custom, duties and brokerage fees shall be for the Seller's account. If applicable, the Seller will ensure the supply of all spare parts as shall be necessary for the proper operation of the Deliverables for a period of three (3) years from acceptance by the Buyer pursuant to section 11; iii) **Infringement:** The Deliverables do not violate any patent, trade secret, or other intellectual property or proprietary rights of any third party; iv) **No Litigation:** There is no actual or threatened litigation: (a) that affects the Seller's ability to comply with this Agreement, or (b) concerning the Deliverables; and v) **Proposal:** All statements and information contained in the Proposal are true and accurate.

c) **Insurance:** The Seller represents and warrants to the Buyer that it has Commercial General Liability Insurance with a combined limit of not less than five million dollars (\$5,000,000); and if an automobile is required to enter Marine Atlantic's premises, automobile liability insurance (including owned, non-owned and hired vehicles) with a limit not less than two million dollars (\$2,000,000) per occurrence, personal injury and property damage combined.

d) **Disclaimer:** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE SELLER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OR COVENANTS OF ANY KIND, EITHER EXPRESS OR IMPLIED.

15. Limitation of Liability & Indemnification: The Seller shall unequivocally and unconditionally indemnify and save harmless the Buyer, and at the Buyer's request, defend the Buyer, its directors, officers, members, employees, and agents from and against any Losses arising from or as a result of any Claim by the Seller, or a third party, including as applicable their representatives, officers, directors, agents and servants including any and all liability, loss expense, damage, claim, licence, and encumbrance, legal expenses or other expenses of any kind or nature whatsoever, imposed on or assumed by, or incurred by or asserted against the Buyer, its directors, officers, agents and servants in any way relating to, or arising out of the supply contemplated in this Agreement except for losses, or portions thereof, arising as a result of the proven negligence or proven contributory negligence of the Buyer.

Indemnification Procedures: i) **Notice:** The Indemnified Party must give the Indemnifying Party prompt written notice of a Claim, provided, however, that failure of an Indemnified Party to give prompt written notice does not relieve the Indemnifying Party from its indemnification obligations under this Agreement except to the extent the defence is materially prejudiced by the failure. When the Indemnifying Party receives notice of a Claim from an Indemnified Party, the Indemnifying Party agrees, at its sole cost and expense, to assume the defence of the Claim by representatives chosen by the Indemnifying Party. The Indemnified Party may participate in the defence of the Claim and employ counsel at its own expense to assist in the defence of the Claim, subject to the Indemnifying Party retaining final authority and control over the conduct of the defence. ii) **Conduct of Defence:** The Indemnifying Party's defence lawyers must be reasonably experienced and qualified in the areas of litigation applicable to the defence. The Indemnifying Party has the right to assert any defences, causes of action or counterclaims available given the subject of the Claim and also has the right to settle the Claim, subject always to the Indemnified Party's prior written consent. The Indemnified Party agrees to provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party's expense, as may be reasonably requested by the Indemnifying Party in connection with any defence, including, without limitation, providing the Indemnifying Party with information, documents, records and reasonable access to the Indemnified Party as the Indemnifying Party reasonably deems necessary.

16. Termination:

a) **Termination for Insolvency:** If either Party is adjudged insolvent or bankrupt, or upon the institution of any proceedings by it seeking relief, reorganization or arrangement under any Laws relating to insolvency, or if an involuntary petition in bankruptcy is filed against a Party and the petition is not discharged within sixty (60) days after filing, or upon any assignment for the benefit of a Party's creditors, or upon the appointment of a receiver, liquidator or trustee of any of a Party's assets, or upon the liquidation, dissolution or winding up of its business (each, an "**Event of Bankruptcy**"), then the Party affected by any Event of Bankruptcy must immediately give notice of the Event of Bankruptcy to the other Party, and the other Party may terminate this Agreement by notice to the affected Party. b) **Termination for Breach:** If either Party breaches any material provision contained in this Agreement and the breach is not cured within thirty (30) days after the breaching Party receives notice in writing of the breach (together with reasonable details of such breach) from the non-breaching Party, the non-breaching Party may then deliver a second notice to the breaching Party immediately terminating this Agreement. c) Each Party may also terminate this Agreement for any reason on providing the other Party with thirty (30) days prior written notice.

17. Force Majeure:

Any failure or delay by a Party in the performance of its obligations under this Agreement is not a default or breach of the Agreement or a ground for termination under this Agreement to the extent the failure or delay is due to elements of nature or acts of God, acts of war, terrorism, riots, revolutions, or strikes or other factors beyond the reasonable control and without the fault or negligence of the Party claiming the force majeure, and which, despite all reasonable efforts, timely taken by the Party claiming the force majeure to prevent its occurrence or mitigate its effects, causes failure or delay (each, a "**Force Majeure Event**"). The Party failing or delaying due to a Force Majeure Event agrees to give notice to the other Party which describes the Force Majeure Event and includes a good faith estimate as to the impact of the Force Majeure Event upon its responsibilities under this Agreement, including, but not limited to, any scheduling changes. However, should any failure to perform or delay in performance due to a Force Majeure Event last longer than thirty (30) days, or should three (3) Force Majeure Events apply to the performance of a Party

during any calendar year, the Party not subject to the Force Majeure Event may terminate this Agreement by notice to the Party subject to the Force Majeure Event. Lack of financial resources shall not be considered Force Majeure.

18. General:

a) **Entire Agreement and Amendments:** This Agreement is the entire agreement between the Parties and supersedes all earlier and simultaneous agreements regarding the subject matter, including, without limitation, any invoices, business forms, proposals or quotations. This Agreement may be amended only in a written document, signed by both Parties. **IT IS EXPRESSLY AGREED BY THE SELLER THAT ONLY THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL PREVAIL AND THAT ANY TERMS AND CONDITIONS SUBMITTED BY THE SELLER, INCLUDING ANY TERMS AND CONDITIONS ATTEMPTING OR PURPORTING TO LIMIT, NEGATE, AMEND, REPLACE OR SUPERCEDE THIS AGREEMENT, WHETHER FORMING PART OF THE SELLER'S QUOTATION, PROPOSAL OR OTHERWISE SUBMITTED OR REFERENCED IN ANY WAY OR FORM, SHALL NOT APPLY.**

b) **Independent Contractors, Third Party Beneficiaries, and Subcontractors:** The Parties acknowledge that they are independent contractors under this Agreement, and except if expressly stated otherwise, none of the Parties, or any of their employees or agents, has the power or authority to bind or obligate the other Party. Except if expressly stated, no third party is a beneficiary of this Agreement. The Seller may not subcontract any obligation under this Agreement without the Buyer's prior written consent. The Buyer can subcontract without the Seller's prior written consent. Each Party is responsible for its subcontractors' compliance with and breach of this Agreement as if the subcontractors' acts and omissions were the Party's own.

c) **Governing Law and Forum:** All claims must be arbitrated or litigated, as the case may be, in St. John's, Newfoundland and Labrador, Canada, regardless of the inconvenience of the forum, or at the Buyer's option the Federal Court of Canada, located in the Province of Newfoundland and Labrador. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to a Contract, and is strictly excluded.

d) **Assignment:** The Seller shall not assign all or any of its rights or obligations under this Agreement without the prior written consent of the Buyer.

e) **Enurement:** This Agreement binds and enures to the benefit of the Parties' successors and permitted assigns.

f) **No Waivers, Cumulative Remedies:** Party's failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement. Except if expressly stated otherwise, all remedies under this Agreement, at Law or in equity, are cumulative and nonexclusive.

g) **Severability:** If any portion of this Agreement is held to be unenforceable, the unenforceable portion must be construed as nearly as possible to reflect the original intent of the Parties, the remaining portions remain in full force and effect, and the unenforceable portion remains enforceable in all other contexts and jurisdictions.

h) **Captions and Plural Terms:** All captions are for purposes of convenience only and are not to be used in interpretation or enforcement of this Agreement. Terms defined in the singular have the same meaning in the plural and vice versa.

i) **Notice:** All notices, including notices of address changes, under this Agreement must be sent by registered or certified mail or by overnight commercial delivery to the Buyer at address below.

Contact information:

Marine Atlantic Inc.
10 Fort William Place, Suite 302
Baine Johnston Centre St. John's, NL A1C 1K4 Canada
Attention: Corporate Counsel
Phone: 709-772-0335 Fax: 709-772-8956
Email: contracts@marine-atlantic.ca

j) **Survival:** The following captioned sections survive any termination, expiration or non-renewal of this Agreement: "Limitation of Liability & Indemnification", "Representations and Warranties", "Survival" and "General", as well as any other provisions expressly stating that they are perpetual or survive this Agreement.

k) **Interpretation:** Unless the context otherwise requires, words importing the singular include the plural and vice-versa. Headings are for convenience of reference only and shall not affect interpretation. In the case of inconsistency between the RFP, RFQ, the Proposal, a Purchase Order and this Agreement (or either one of them), the following priority shall apply: i) Agreement ii) Purchase Order iii) the RFP/RFQ, and iv) the Proposal.

l) **Confidentiality:** Each of the Buyer and the Seller agrees that it will not, either during the term of this Agreement or any time thereafter (except in accordance with its duties under this Agreement or as required by Law or the other Party) disclose to any Person any confidential information of or relating to the other Party of which it has become possessed of as a result of this Agreement (including the terms of this Agreement). Nothing in this Agreement prohibits disclosure of information which i) is in the public domain ii) after disclosure to a Party becomes part of the public domain otherwise than as a result of the wrongful act of that Party iii) is received from a third party provided that it was not acquired directly or indirectly by that third party from a Party, or iv) is required to be disclosed by Law or by any Government Authority having jurisdiction over a Party.